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Response to Written Comments

Proposed Policy for Compliance Schedules in National Pollutant Discharge Elimination System (NPDES) Permits

State Water Resources Control Board
April 15, 2008

FINAL

Table of Contents

LIST OF ACRONYMS AND ABBREVIATIONS

Basin Plan	Regional Water Quality Control Plan
BMP	Best Management Practice
Cal. Code Regs.	California Code of Regulations
Cal. Wat. Code	California Water Code
CEQA	California Environmental Quality Act
C.F.R.	Code of Federal Regulations
CTR	California Toxics Rule
CWA	Clean Water Act
LA	Load Allocation
MMP	Mandatory Minimum Penalty
MS4	Municipal Separate Storm Sewer System
NPDES	National Pollutant Discharge Elimination System
NTR	National Toxics Rule
POTW	Publicly Owned Treatment Works
Regional Water Board	Regional Water Quality Control Board
ROWD	Report of Waste Discharge
SDC	Small Disadvantaged Community
SIP	Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California
SQO	Sediment Quality Objective
SSO	Site-Specific Objective
State Water Board	State Water Resources Control Board
Tit.	Title
TMDL	Total Maximum Daily Load
TSO	Time Schedule Order
UAA	Use Attainability Analysis
U.S.C.	United States Code
USEPA	United States Environmental Protection Agency
Water Boards	State and Regional Water Boards
WDR	Waste Discharge Requirement
WER	Water Effects Ratio
WLA	Waste Load Allocation
WQBEL	Water Quality-Based Effluent Limitation
WQS	Water Quality Standard

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Comment Letters Received by the February 20, 2008 Deadline

Comment Letter No.	Date Received	Author	Affiliation
1	1/18/2008	Scott Keen	TetraTech
2	2/14/2008	Greg Scoles	City of Santa Rosa
3	2/19/2008	Tracy Egoscue	Los Angeles Water Board
4	2/19/2008	Craig Johns	Partnership for Sound Science in Environmental Policy
5	2/20/2008	Peter McGaw	Archer Norris (on behalf of Mirant California, Inc.)
6	2/20/2008	Roberta Larson	California Association of Sanitation Agencies, et al.
7	2/20/2008	Christopher Sproul	California Coastkeeper Alliance, et al.
8	2/20/2008	Chris Crompton	California Stormwater Quality Association
9	2/20/2008	Debbie Webster	Central Valley Clean Water Association
10	2/20/2008	Kenneth Landau	Central Valley Water Board
11	2/20/2008	Katherine Rubin	City of Los Angeles - Department of Water and Power
12	2/20/2008	Raymond Tremblay	County Sanitation Districts of Los Angeles County
13	2/20/2008	C.L. Stathos	Department of Navy
14	2/20/2008	Ginn Doose	General Public
15	2/20/2008	Teresa Jordan	General Public
16	2/20/2008	Wendell Kido	Sacramento Regional County Sanitation District
17	2/20/2008	Alexis Strauss	U.S. Environmental Protection Agency
18	2/20/2008	Kevin Buchan	Western States Petroleum Association

FINAL

COMMENTS LISTED BY ISSUE:

A. General Comments

Comment A.1:
We support the proposed Policy because it is all encompassing and it incorporates the best pieces of the existing compliance schedules from the various Regional Water Boards. (Comment letter 3.01).

Response A1:
The support for the proposed Policy is appreciated. Staff sought input from all the Regional Water Boards with the goal of incorporating the best pieces of the existing compliance schedules from the various regional Basin Plans.

Comment A.2:
We commend the State Water Board for its thoughtful and comprehensive NPDES compliance schedule provisions and agree that a consistent approach to authorizing compliance schedules is desirable to promote certainty and to conserve State and federal resources.

Response A2:
Comment noted. The support for the proposed Policy is appreciated.

Comment A.3:
We support the intent of the Policy, which is to provide a fair and consistent statewide policy for including compliance schedules in NPDES permits. Furthermore, we strongly support the use of compliance schedules as an effective tool to provide permittees with sufficient time to bring their facility/operations into compliance with water quality-based limitations while assuring that appropriate water quality objectives are achieved and that beneficial uses of the waters of the state are protected. In addition, they assure both the public and the regulated community that reasonable and necessary controls will be implemented in a timely and cost-effective fashion, thus conserving state and federal resources. (Comment letters 5.01, 8.01, and 11.01).

Response A.3:
The support is appreciated. Staff agrees that the use of NPDES compliance schedules can be an effective compliance tool for the reasons stated by the commenters.

Comment A.4:
I strongly recommend that the State Water Board *not* adopt the proposed Policy, after reading that NPDES compliance schedules are discretionary tools and that enforcement orders can still do the job, that wetlands protection has been diminished, that California has the highest percentage of facilities exceeding their permit limits, that the Regions who would be most affected by the Policy were the Regions currently without compliance schedule authorization, and that the Policy is modeled on the Los Angeles Basin Plan when facilities in that Region has some of the worst compliance rates in the country. (Comment letter 15.01).

Response A.4:
Comment noted. The commenter is correct that that compliance schedules can be issued to NPDES permittees in enforcement orders, even if the proposed Policy is not adopted by the State Water Board. An enforcement order is an effective compliance tool that is already

currently available to all Regions, even those Regions without specific NPDES compliance schedule authorizations in their Basin Plans. An enforcement order is, however, not part of a NPDES permit, so even if a permittee is operating fully within the constraints of the enforcement order, the permittee is considered in violation of the NPDES permit until final permit limitations are met. This can potentially lead to penalties, citizen's suits and lowered bond ratings for the permittee, even if the permittee is moving towards permit compliance as soon as possible. While the proposed Policy would not affect the Water Boards' ability to impose enforcement orders where needed, the proposed Policy would give the Water Boards without current NPDES compliance schedule authorization the additional option (under certain prescribed circumstances) of including compliance schedules within the NPDES permits themselves. The proposed Policy would furthermore provide statewide uniformity to the authorization and implementation of NPDES compliance schedules throughout the Regions, thus providing greater regulatory clarity for the public, dischargers and regulators alike. Also, because the proposed Policy requires the permittee to be in compliance with water quality standards (WQS) "as soon as possible", staff does not believe that the proposed Policy would lead to a greater percentage of facilities exceeding their final permit limits. In addition, by authorizing compliance schedules in NPDES permits, more NPDES permittees would actually be expected to be in compliance with their permits since the NPDES compliance schedule is required to be incorporated as enforceable terms in the permit itself. Staff therefore recommends that the State Water Board adopt the proposed Policy.

Comment A.5:
We recognize the challenge of developing a consistent statewide policy for compliance schedules, while trying to reconcile the various existing Basin Plan compliance schedules provisions. Nevertheless, it appears that the Proposed Policy seeks to take the most restrictive provisions from the various Basin Plans and collectivize them into a single, extremely restrictive policy that is likely to have many substantial negative consequences for municipal wastewater treatment agencies. The proposed Policy could place NPDES permittees in jeopardy of non-compliance with future NPDES permit limits, and therefore expose them to unwarranted monetary penalties and third-party "citizen suits". (Comment letter 16.01).

Response A.5:
While staff agrees that the proposed policy is more restrictive than some of the compliance schedule provisions in the regional Basin Plans, staff does not agree that the Policy is extremely restrictive. In fact, several of the Regions have more restrictive existing provisions and three Regions do not authorize compliance schedules at all. Staff believes that the proposed Policy strikes an appropriate balance between providing firm guidance, yet allowing needed flexibility. Staff does agree that the Policy places NPDES permittees in jeopardy of non-compliance with future NPDES permit limits; furthermore, NPDES compliance schedules are a discretionary regulatory tool that is not appropriate for all permittees.

Comment A.6:
The Policy should ensure that compliance schedules are not used simply to shield dischargers from liability while failing to bring timely compliance with WQBELs. While we commend the Draft Staff Report's recognition that compliance schedules must not be automatically granted, but must instead be narrowly issued to only to dischargers that meet the policy's terms, the proposed Policy is not adequate in this regard. The new policy must be sufficiently narrowly framed to avoid past, proven abuses of such compliance schedules. Decisive State Water Board action giving firm guidance to the Regional Water Boards on proper issuance of compliance schedules is obviously needed. We request that the proposed Policy either be

rejected in light of the illegality of compliance schedules, or at a minimum be amended as recommended. (Comment letter 7.03).

Response A.6:
Comment noted. Staff believes that the proposed Policy strikes an appropriate balance between providing firm guidance, yet allowing needed flexibility. (See also comment A.4 above and the corresponding staff response).

Comment A.7:
What is meant by the wording "Compliance are discretionary tools, not mandatory"? Compliance is already written into the State Regulations, and enforcement order does not say NPDES. It sounds like you are grandfathering in the last six Regions out of the nine that are noncompliant, rather than imposing enforcement measures for failure to comply. And who are the stakeholders, you refer to? (Comment letter 14.01).

Response A.7:
Staff did not find the wording referred to by the commenter in either the proposed Policy, fact sheet or *Draft Staff Report,* but believes that the commenter may have misunderstood the following wording in the fact sheet "Both federal and state law recognize compliance schedules as a discretionary regulatory tool for bringing NPDES dischargers into compliance with new, revised, or newly interpreted WQS, without being in violation of their permit." Staff agrees that ***compliance*** with applicable WQSs is mandatory; however, ***NPDES compliance schedules*** are discretionary regulatory tools, which means that a Water Board are not obligated to issue NPDES compliance schedules even where a discharger meets all requirements, but may choose another regulatory option, such as issuing an enforcement order, instead. Also, because the proposed Policy requires the permittee to be in compliance with WQS "as soon as possible", staff does not believe that the proposed Policy would lead to a greater percentage of facilities exceeding their final permit limits or being out of compliance with their permit.

Staff did not refer to "stakeholders" in the Policy or fact sheet, but this term is often used to refer to people interested in or affected by an action.

Comment A.8:
Regarding "making the discharger vulnerable to mandatory minimum penalties (MMPs) under certain circumstances and citizen lawsuits - compliance is very dear to my heart. The lack of enforcement by the State Water Board has caused the drinking water for the Sepulveda Basin, Simi Valley and Ventura County to be contaminated. The failure to enforce water regulations has caused my family to suffer grievous hardship and harassment by simply reporting this noncompliance to the State Water Board. I personally would like to see compliance be enforced. I am in opposition to just slapping the violators on the hand! (Comment letter 14.02).

Response A.8:
Staff agrees that ensuring that dischargers comply with applicable WQSs is of utmost importance. However, a discharger may not be able to comply with a new, revised, or newly interpreted criteria or objective ***immediately***, because, for instance, a new facility must first be built or a new program implemented to treat the effluent. This Policy is not intended in any way to shield dischargers from complying with WQSs; it **is** intended to allow a discharger (where a Water Board consider it appropriate) a specific period of time to comply that is as short as possible without being subject to enforcement proceedings.

Comment A.9:
We commend the State Water Board for reviewing California's current patchwork of compliance schedules policies. These policies vary widely, leading to confusion for permit writers, regulated dischargers, public interest organizations, and other members of the public. More significantly, they also have led to a significant number of illegal actions by permit writers to extend the dates for dischargers to comply with WQBELs and thus to delay the dates for achieving the State's basic standards for clean water. Indeed, a 2007 U.S. Environmental Protection Agency (USEPA) audit concluded that the Regional Water Boards had failed to comply with federal law in issuing compliance schedules in every single NPDES permitting action. The State Water Board found that the San Francisco Regional Water Board issued specious compliance schedules after being forced to take up the issue on its own motion. The State Water Board must curb the abuse of compliance schedules fostered by the current confusing web of state policies by adopting a single, consistent policy that complies with both state and federal laws. (Comment letter 7.01).

Response A.9:
Staff disagrees with the statement that the 2007 USEPA audit concluded that the Regional Water Boards had failed to comply with federal law in issuing compliance schedules in every single NPDES permitting action; however, staff believes that Regional Water Boards had failed to document the justification for a compliance schedule in some of the permits. Staff agrees that a statewide consistent compliance schedule policy is needed to provide uniform authorization and clear guidance on implementation, and further believes that the proposed Policy provides a fair and consistent statewide policy for including compliance schedules in NPDES permits.

Comment A.10:
We support adoption of a statewide policy on NPDES compliance schedules because a uniform statewide policy on compliance schedules will bring consistency to the state's NPDES program and because a statewide policy will allow for compliance schedules in regions where there is no current explicit authorization for such schedules. The availability of compliance schedules is critically important to the Publicly Owned Treatment Works (POTW) community, as it is often physically impossible for a POTW to meet adopted, revised, or newly interpreted WQSs at the time a new permit limit becomes effective. In the absence of a NPDES compliance schedule, a POTW can only be given time to comply through an enforcement order such as a Time Schedule Order (TSO) or a Cease and Desist Order. Issuance of such an order does not shield the POTW from citizen suits pursuant to the CWA, even if the POTW is in full compliance with the order. (Comment letter 12.01).

Response A.10:
Please see responses to comment A.2 and A.3.

Comment A.11:
Why can't the State Water Board wait to implement this statewide policy until May 18, 2010, when the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (SIP) expires? A statewide compliance schedule policy should have been hashed out back in 2000, not two years before the SIP expires; then the Regional Water Boards would all have been on the same page now. If the proposed Policy is adopted, I recommend that all Regional Basin Plans include the type of descriptive detail that the San Diego Water Board put in its amendment to reach the "equitable regulation" goal. (Comment letter 15.13).

Response A.11:
Staff agrees that it would have been beneficial to have adopted this Policy back in 2000, as the Regional Water Boards would have been saved the work of adopting individual compliance schedule provisions into their Basin Plans, all Regional Water Boards would have been consistently authorizing and implementing compliance schedules, and there would have been no need to adopt the proposed Policy now. However, back in 2000 the immediate need was for compliance schedule provisions to implement the new California Toxics Rule (CTR) criteria. A more encompassing statewide policy was envisioned to be adopted at a later date (though earlier than 2008). The State Water Board ***could*** wait to implement the proposed Policy until May 18, 2010, when the SIP compliance schedule provisions expires, but there would be no advantage to waiting since the proposed Policy does not apply to CTR constituents.

Staff did pattern some of the language in the proposed Policy after the San Diego Water Board compliance schedule amendment, but used language from all the Regional Water Board's compliance schedule provisions. See also the response to Comment A.1.

Comment A.12:
We believe that the CWA requires that WQBELs be immediately effective and enforceable*,* and compliance schedules cannot legally delay the effective date of WQBELs. The *Draft Staff Report* references an administrative decision, *In the Matter of Star-Kist Caribe,* that concluded that compliance schedules can delay the effective date of a WQBEL so long as the WQBEL is derived from a WQS set after 1977. However, this decision conflicts not only with the plain meaning of the CWA, but also with its applicable legislative history and relevant federal court case law - all of which trump the administrative decision. Numerous courts have held that neither the USEPA nor the states have authority to extend the deadlines for compliance established by CWA section 301(b)(1). The fact that Congress explicitly authorized certain extensions of CWA section 301(b)(I)(C)'s deadline indicates that it did not intend to allow others which it did not explicitly authorize (see *United States* v. *Homestake Mining Co.*). The proposed Policy should be revised to make it clear that WQBELs are enforceable from the date of permit issuance. Any issued compliance schedules must be limited to specifying the remedial actions that a permittee must take to comply with these WQBELs, within the time frame of the permit. The Regional Water Boards could issue administrative enforcement orders/TSOs instead that give the dischargers a reasonable schedule for implementing the actions needed to comply with WQBELs. (Comment letter 7.02).

Response A.12:
Staff disagrees. USEPA has long taken the position that the Clean Water Act (CWA) authorizes the states to adopt compliance schedule provisions for WQSs that are adopted, revised, or newly interpreted after July 1, l977. Consistent with this position, USEPA has approved compliance schedule authorization provisions in regional water quality control plans and the State Water Board's Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California. In addition, USEPA has itself authorized use of compliance schedules in NPDES permits to meet permit limitations based on new or revised criteria adopted by the agency. See Great Lakes Water Quality Guidance (40 C.F.R. part 132, appendix F, procedure 9.B.2), the CTR (40 C.F.R. §131/38(e)(7)), and the BEACH Act Rule (40 C.F.R. §131.41(f)(7)). See also the enclosure to USEPA's letter to Tom Howard, Acting Executive Director, State Water Board, from Alexis Strauss, Director, Water Division (November

29, 2006) and Communities for a Better Environment v. State Water Resources Control Board (2005) 132 Cal. App. 4th 1313 [34 Cal. Rptr. 3d 396].

Comment A.13:
Staff's rationale for compliance schedules is improper. Three reasons are offered in the *Draft Staff Report* for granting compliance schedules which delay the effective, enforceable date of WQBELs: (I) insulating dischargers from CWA citizen suits, (2) insulating dischargers from MMPs, and (3) avoiding a negative perception of the discharger as a CWA violator. Though the *Draft Staff Report* does not say so, such compliance schedules also insulate dischargers from enforcement by the USEPA. None of these purposes are legitimate or lawful, however, and all directly prevent the Water Boards from achieving their mandate of ensuring fishable, swimmable waters - by 1983. By blocking USEPA and citizens groups from lawfully seeking court enforceable orders directing dischargers to comply with clean water laws, such compliance schedules rob EPA and citizens of the oversight tool and stakeholder status that Congress intended for them to have. The Regional Water Boards also have typically justified compliance schedules as a means to promote discharger compliance. Making a law more lax certainly makes it easier to comply with, but hardly advances the purposes of that law. Congress mandated that WQBELs must be set at a level necessary to ensure WQS attainment regardless of economic and technological restraints. (Comment letter 7.06).

Response A.13:
We disagree. Authorizing compliance schedules in appropriate cases is a fair and equitable tool to bring dischargers into compliance. Further, USEPA is in agreement as evidenced by the inclusion of compliance schedule authorizing provisions in the BEACH Act Rule, the Great Lakes Guidance, and the CTR.

Comment A.14:
Since California Water Code section 13360 precludes the Regional Water Board from specifying the manner of compliance, we request that Resolve 7 of the proposed Policy be modified as follows: "This Policy authorizes a Water Board to include a compliance schedule in a permit for an existing discharger to implement a new, revised, or newly interpreted water quality standard where the **Discharger, following the compliance schedule application requirements referenced in Resolve 3, has demonstrated to the satisfaction of the Water Board that a compliance schedule is warranted per the Policy,** ~~the Water Board determines that the discharger must design and construct facilities or implement new or significantly expanded programs and secure financing, if necessary, to support these activities~~ in order to comply with a permit limitation specified to implement the standard." (Comment letter 3.08).

Response A.14:
To clarify that the Water Boards are not specifying the manner of compliance with permit limitations, staff has revised the wording of this paragraph to authorize a compliance schedule where the discharger "has demonstrated that the discharger needs additional time to implement actions to comply with the limitation. These actions may include, but are not limited to, designing and constructing facilities . . . ."

Comment A.15:
Finding 1 of the proposed Policy says the State Water Board is designated as the state water pollution *control* agency for all purposes under the federal CWA. However, some agencies (e.g. the Board of Forestry) are also designated management agencies for certain CWA purposes. This ambiguity could be clarified. (Comment letter 17.03).

Response A.15:
The language for Finding 1 is taken from Water Code section 13160. The suggested clarification is not relevant to this proposed Policy.

Comment A.16:
Compliance schedules are only available for use if authorized in State WQSs and/or implementing regulations, as discussed in "*In the Matter of Star-Kist Caribe, Inc."* We therefore recommend the State Water Board clarify how the new compliance schedule policy complies with this aspect of the *Star-Kist* decision. (Comment letter 17.02).

Response A.16:
The proposed compliance schedule policy is a state policy for water quality control. The regulatory provisions of the policy must be approved by the state Office of Administrative Law under the California Administrative Procedure Act. Once approved by the California Office of Administrative Law, the policy will become part of the state's approved regulations.

Comment A.17:
None of the Regional Water Boards are comprehensively tracking how many compliance schedules they have issued nor assessing in any fashion the cumulative impact of such compliance schedules on the waters in their jurisdiction. Our citizen database represents *the only information* that the Water Boards has on the cumulative issuance of compliance schedules statewide. Our database indicates that the Regional Water Boards are making very widespread use of compliance schedules, and that *the majority* of the dischargers with compliance schedules discharge to CWA section 303(d) listed waters. Thus, many compliance schedules are legalizing discharges which are adding to the pollution woes of waters that the State officially recognizes to be impaired (more than 2000 instances). This is a recipe for adding more impaired waters and thus the need to develop Total Maximum Daily Loads (TMDLs). Accordingly, the State Water Board should be very hesitant to continue an approach likely to add to the number of impaired waters in California. (Comment letter 7.05).

Response A.17:
The only import of the compliance schedule policy is to authorize a compliance schedule in a permit, as opposed to a schedule in a separate enforcement order. If a new, revised, or newly interpreted water quality objective or criterion results in a more stringent permit limitation with which the permittee cannot comply, the permittee will necessarily need time to come into compliance. The permittee's inability to comply immediately is not due to any compliance schedule but rather is a reflection of reality. As such, staff does not agree that proposed Policy is likely to add to the number of impaired waters in California. In fact, the proposed Policy requires that water quality-based limitations be met "as soon as possible". Tracking of the number of compliance schedules issued is currently performed by the individual Regional Water Boards that have compliance schedule authorizations in the Basin Plans.

B. Scope

Comment B.1:
We support the recommended *Alternative 1.d* in the *Draft Staff Report*, in which the compliance schedule policy supersedes compliance schedule provisions in all regional and statewide plans

and policies, with the exception of effective TMDLs in the Basin Plans and the SIP. (Comment letter 11.02).

Response B.1:
Comment noted. The support for the recommended alternative is appreciated.

Comment B.2:
We believe that the Policy should supersede compliance schedule provisions in *all* regional and statewide plans and policies, including the SIP, and also address issuance of compliance schedules for effective TMDLs. It would provide better guidance to all stakeholders if there was but a single umbrella statewide compliance schedule policy. However, compliance schedules for WQBELs derived from the CTR should not be permissible, or at the very least, not allowed to extend past May 18, 2010. We see no reason not to treat a TMDL as the equivalent of a new WQS and apply the same rules (e.g., compliance schedules can last no more than five years from the date the TMDL was adopted). (Comment letter 7.07).

Response B.2:
Staff considered the option of superseding the SIP in the *Draft Staff Report* and addressing issuance of compliance schedules for permit limitations based on existing CTR constituents. However, because the CTR and the SIP has been in effect since 2000, all NPDES permits should have been reissued during this timeframe (given five-year permit terms) and all NPDES permittees should either already be meeting the CTR criteria or have compliance schedules in place that requires compliance with the existing CTR criteria no later than May 18, 2010 (which is not far off). Staff does not generally believe that it is good use of Regional Water Board resources, nor fair to permittees, to reopen permits with existing compliance schedules for the sole purpose of ensuring that these schedules meet all requirements of the proposed Policy. Also, because SIP requirements are very similar to the proposed Policy's requirements, there would be little to gain by doing so. The Policy does, however, apply to CTR criteria that are revised by the USEPA after the effective date of the Policy. If a Water Board adopts a substantially different objective for one of the existing CTR constituents, the proposed Policy would also apply.

The proposed Policy also does not supersede existing compliance schedule authorizations included in TMDLs (in Basin Plans) that are in effect on the effective date of the Policy. However, the proposed Policy states that the compliance schedule included in the NPDES permits for the individual permittees cannot extend beyond the implementation schedule provided in the TMDL and must be as short as possible (this would vary depending on the individual permittees' situation). The supporting documentation for the TMDL itself should provide the reason for why the water body is not meeting WQSs and why a longer time timeframe (than otherwise provided) may be needed for compliance. Often, the implementation of a TMDL demands complex regulatory solutions, which may take longer to implement.

Comment B.3:
We support *Alternative 1.b* in the *Draft Staff Report*, which would not affect those Regions with existing NPDES compliance schedule authorization in their Basin Plan. We have serious concerns about any policy that would nullify regional approaches that were carefully crafted in a public process with substantial stakeholder input and resources and have been approved by the USEPA. We question the need for a new and, in most instances, more restrictive, statewide policy. (Comment letters 2.01, 4.01, and 9.04).

Response B.3:
It is a policy decision as to whether the proposed Policy should supersede existing compliance schedule provisions in the Basin Plans. However, the State Water Board has stated that statewide, uniform provisions authorizing compliance schedules are needed in order to make better use of discharger, interested party, and Water Board resources. On this basis, staff selected *Alternative 1.d* in the *Draft Staff Report* as the alternative that best met these goals.

Comment B.4:
We are concerned that the proposed Policy would invalidate existing compliance schedules contained in NPDES permits already adopted by Regional Water Boards under existing Basin Plan compliance schedule provisions. Arguably, a third party could request that such permits be reopened and modified to comport with the proposed Policy. We believe this issue could easily be resolved in one of two manners: (1) adopt *Alternative1b* in the *Draft Staff Report* which makes the proposed Policy applicable only to those Regions that have not yet adopted compliance schedule provisions into their Basin Plans; or (2) add a separate section that specifically provides the proposed Policy is applicable only to permits adopted after the proposed Policy is adopted by the State Water Board. (Comment letters 2.05 and 4.07).

Response B.4:

Staff does not generally believe that it is good use of Water Board resources, nor fair to permittees, to reopen permits with existing compliance schedules for the sole purpose of ensuring that these schedules meet all requirements of the proposed Policy. Staff is therefore proposing to add a clause to the Policy (a new Resolve 3) that specifically states that “The Policy shall not apply to existing compliance schedules in permits that are in effect on the effective date of the Policy. Under no circumstances, however, can a compliance schedule that is in effect on the date of the Policy exceed ten years from the initial date that the compliance schedule was first included in the permit.” See also response to Comment B.3.

C. Duration and Deadline

We prefer a maximum duration of five years or less:

Comment C.1:
Even if the Water Boards could delay the effective date of some WQBELs, they cannot delay the effective date of WQBELs derived from the CTR. Pursuant to 40 C.F.R. section 131.38(e)(8), the CTR compliance schedule authorization expressly expired on May18, 2005. The State Water Board may contend that the USEPA Federal Register Preamble effectively extended this compliance schedule authority by observing "[I]f the State Water Board adopts, and USEPA approves, a statewide authorizing compliance schedule provision significantly prior to May 18, 2005, USEPA will act to stay the authorizing compliance schedule provision in today's rule." It is true that the State Water Board subsequently adopted the SIP, which provides for WQBEL-delaying compliance schedules without imposing a May 18, 2005 cutoff. However, USEPA has not acted to stay 40 C.F.R. section I31.38(e)(8) by the only means it can lawfully do so: notice and comment rulemaking that amends 40 C.F.R. section 131.38(e)(8). Without such a rulemaking, 40 C.F.R. section 13138(e)(8) remains the law, and it unequivocally *ends* authorization to issue compliance schedules for CTR-based effluent limitations on May18, 2005. (Comment letter 7.04).

Response C.1:
The proposed Policy does not apply to CTR criteria. Consequently, this comment is not within the scope of this proposed action.

Comment C.2:
We agree with the *Draft Staff Reports'* recommendations that compliance schedules should not be allowed to last longer than a specified number of years from the date of permit issuance or from the date that WQS are adopted (but not merely reinterpreted). However, the suggested time frames are unduly lenient. Given the adverse environmental consequences of delaying the effective date of WQBELs, and the preclusion of citizen and agency enforcement options perpetrated by WQBEL-delaying compliance schedules, such compliance schedules should be strictly limited to no more than five years from the date of NPDES permit issuance or five years from the date a WQS is issued, whichever comes first. After a WQS is issued, all affected dischargers are effectively put on notice of what their final WQBELs will be once their permits are renewed given that WQBELs must be derived from the WQS. Five years is long enough to give dischargers to comply with new WQS. (Comment letter 7.08).

Response C.2:
Staff believes that five years is in most cases sufficient time for a permittee to comply with a more stringent permit limitation implementing a new, revised or newly interpreted objective or criterion. However, additional time may in some cases be needed for very complex or large projects. Unforeseen circumstances beyond the control of the discharger may also prevent compliance with final permit limitations within five years, even though the discharger has met the conditions of the permit up to that point. Staff further believes that while a discharger can immediately take steps to assess levels of the applicable pollutant in the influent and effluent and embark on source control measures if needed, that in some cases it can nevertheless be difficult for a discharger to accurately calculate what a future permit limitation would be based solely on the new WQS. The limitation could be affected by calculation methods, averaging period, mixing zones, hardness, pH, etc. Thus, staff believes that it may be too restrictive to require that WQSs be fully met five years from the date a WQS is issued. The maximum duration of a NPDES compliance schedule is largely a policy decision for the State Water Board to make. Based on public comments stating that more than five years may be needed for compliance in some cases, the State Water Board directed staff at the March 18, 2008 Public Hearing to change the proposed Policy to allow for a ten-year compliance period, but stressing that the Water Boards must require NPDES permittees to comply as soon as possible given the adverse environmental consequences of not meeting WQS.

Comment C.3:
I support *Alternative 2.a* of the *Draft Staff Report* (a maximum of five years). (Comment letter 15.04).

Response C.3:
Please see response to Comment C.2.

We prefer a maximum duration of five years or longer:

Comment C.4:
The wording "unforeseen circumstances beyond the control of the discharger" needs to be better defined. Dischargers need to have some confidence that compliance schedules for

certain situations that would require extensive design and construction would be allowed more time than just one permit term. (Comment letter 11.04).

Response C.4:
Please see response to Comment C.2.

Comment C.5:
We are concerned that the policy does not allow sufficient flexibility for small, disadvantaged communities (SDCs) that may have difficulty raising resources to upgrade treatment plants. Often, SDCs cannot increase fees and taxes to cover necessary wastewater treatment plant upgrades and expansions and need grants and loans in order to afford planning and construction. Financial assistance is highly competitive and there are no assurances that these communities will successfully obtain funds within the time constraints in the proposed policy. These communities, which have the greatest need for funding, are often the least able to identify funding opportunities and develop and submit competitive funding applications. Therefore, we recommend that *Resolve 5.c*., which describe the allowable lengths of compliance schedule, include an exception to allow compliance schedules beyond one additional permit term or ten years for SDCs that have been unable to secure financing for the planning and construction of wastewater treatment upgrades as long as the discharger shows good faith efforts in securing necessary financing. (Comment letter 10.01).

Response C.5:
Please see response to Comment C.2. The Policy now allows for a ten-year compliance period. However, staff believes that a longer compliance schedule should not be allowed for SDCs strictly for economic reasons, because people, wildlife, and the environment would be exposed to pollution longer. Many SDCs are located in upstream locations in the watershed. Allowing a SDC in an upstream location to discharge above standards, could greatly affect the water quality of the entire watershed and negate the effects of larger facilities complying with standards. Many SDCs are also located in fairly pristine areas, where the negative effects of polluted discharge could be sizable. However, staff recommends that adequate funding and assistance should be made available to SDCs to help them comply with new, revised, or newly interpreted WQSs.

Comment C.6:
We strongly oppose the establishment of numeric effluent limitations for storm water discharges, but recognize that the State Water Board has approved the use in some facilities (e.g., the 2006 Boeing Order). Given the wide variation in storm water quality and difficulty with compliance with numeric limits, the proposed Policy should allow compliance schedules longer than five years for implementation of numeric effluent limitations for storm water discharges. (Comment letter 18.04).

Response C.6:
The maximum duration of a NPDES compliance schedule for storm water dischargers is largely a policy decision for the State Water Board to make. Please see response to Comment C.2.

Comment C.7:
Presumably, as new WQSs, the newly adopted sediment quality objectives (SQOs) will be subject to the proposed Policy. If so, the proposed Policy should allow compliance schedules longer than five years for implementation of these newly adopted SQOs because of the many uncertainties in implementation of that novel program. The State Water Board should allow

Regional Water Boards to develop compliance schedules for SQOs on a case-by-case basis (as the SQO Policy dictates) by exempting SQOs from this Policy. (Comment letter 18.05).

Response C.7:
If USEPA approves the SQOs before this proposed Policy, the Policy will not apply to receiving water limits implementing the objectives. However, the Policy will likely apply to TMDLs developed in the future implementing the objectives, and the proposed Policy authorizes compliance schedules longer than ten years in TMDL implementation plans. Under the SQOs plan, receiving water limits implementing the objectives can be included in permits only under limited circumstances. Further, the plan requires data from three lines of evidence, station assessment, and stressor identification before a permittee can be determined in violation of the receiving water limits. If the Water Board determines, after following these procedures, that discharger is in violation of the receiving water limits, the Water Board can issue a separate enforcement order to provide the discharger time to come into compliance.

Comment C.8:
In some instances, a new limitation may require the development of new technology to treat contaminants in the discharge, which may require more than the allotted five years. The proposed Policy should include special provisions for these limited cases, or clarify if the discharger might qualify for additional time due to "unforeseen circumstances, beyond the control of the discharger". (Comment letter 3.05).

Response C.8:
Please see response to Comment C.2.

Comment C.9:
The five-year time period for compliance schedules in the proposed Policy would conflict with other State Water Board policies and strategies. The new statewide Recycled Water Policy would allow up to ten years for compliance. The Central Valley basin-wide salinity management plan is expected to be implemented over a ten-year period. (Comment letter 4.04).

Response C.9:
Please see response to Comment C.2. Staff disagrees that the proposed Policy would conflict with other State Water Board policies. The State Water Board has adopted plans and policies in the past that did not authorize compliance schedules, authorized schedules of up to ten years, and authorized five-year schedules. Whether to authorize compliance schedules and the authorized length of schedules are within the State Water Board's sound discretion. The State Water Board's proposed recycled water policy is not relevant to the issue addressed in this proposed Policy. The draft recycled water policy primarily addresses discharges to groundwater. The Water Code already authorizes compliance schedules of unspecified length in non-NPDES waste discharge requirements (WDRs). (Wat. Code sec. 13263(c).) This proposed Policy addresses only discharges regulated under NPDES permits.

We prefer a maximum duration of ten years or longer:

Comment C.10:
The County Sanitation Districts of Los Angeles County (Districts) believe that the State Water Board has the legal authority to allow for compliance schedules lasting greater than five years. The Districts entered into a federal consent decree with USEPA that authorized *eight years* to construct facilities to attain full secondary treatment at the Districts' Joint Water Pollution Control

Plant. Therefore, we recommend that the maximum compliance schedule duration be set at ten years after inclusion of the compliance schedule in an NPDES permit, with the possibility of a five-year extension should unforeseen circumstances arise. Unforeseen circumstances should be defined more broadly than in the Proposed Policy to allow flexibility to address a variety of circumstances. (Comment letter 12.05).

Response C.10:
Staff agrees that the State Water Board has the legal authority to allow for compliance schedules lasting greater than five years, and that in some cases, where large or complex facilities or programs need to be constructed or implemented, more than five years may be needed. Please see response to Comment C.2.

Comment C.11: We do not support the recommended *Alternative 2.b* but prefer *Alternative 2.c*, which allows for the duration of a compliance schedule of up to ten years (two permit terms) after initial inclusion of the compliance schedule in the NPDES permit. We believe that a facility will need more than one permit term of five years when there are committed resources to modify, upgrade its operations to increase efficiencies, and/or meet tougher permit requirements. Particularly when the project includes the restoration or reconfiguration of multiple units and structural components of the intakes, thus requiring phased construction. *Alternative 2.b* as written does not allow for the need of phased construction. (Comment letter 11.03).

Response C.11:
Please see response to Comment C.2.

Comment C.12:
We recommend that the proposed Policy be amended to allow for compliance schedules up to ten years, with provisions for an extension under specified conditions. (Comment letter 9.02).

Response C.12:
Please see response to Comment C.2.

Comment C.13:
We prefer *Alternative 3.c*. which restricts the duration of a NPDES compliance schedule to no more than 15 years after the adoption, revision, or new interpretation of applicable standards. We believe that as long as certain criteria and/or milestones are met, then the 15-year deadline is not pointless or "too long to be meaningful" if that amount of time was required to complete phased construction of a facility with multiple units and outfalls. *Alternative 3.b* may in most cases prove to be adequate; however, it may not be sufficient for extensive facility modifications necessary to meet compliance with statewide policies such as 316 b where not only design and construction is necessary but also years of verification monitoring after construction is complete. (Comment letter 11.05).

Response C.13:
Please see response to Comment C.2.

Comment C.14:
We recommend that the maximum compliance schedule duration not be tied to the date when the applicable WQS was adopted, revised, or newly interpreted, but rather be solely tied to when effluent limitations are placed in an NPDES permit because there are a number of different ways to interpret a WQS. For example, ammonia standards depend upon pH and

temperature and depending on where pH and temperature are measured, and depending on the statistics used to derive the pH and temperature used to set a permit limit, the resulting ammonia limitations can vary significantly. The averaging period associated with an effluent limitation can also make a substantial difference with respect to attainment of compliance with an effluent limitation. Effluent limitations that can be met on a monthly-average or annual-average basis cannot necessarily be met on an instantaneous basis, due to fluctuations in the content of wastewater entering a treatment plant. Until an actual effluent limit and averaging period is known, it is extremely difficult to design and build the appropriate level of treatment and in some cases even to determine if treatment is necessary. (Comment letter 12.06).

Response C.14:
Please see response to Comment C.2. Staff agrees that in some cases it may be difficult to determine permit limitations well in advance of the permit being reissued. Even so, in most cases, five years should be sufficient time for a permittee to comply with a more stringent permit limitation implementing a new, revised or newly interpreted objective or criterion. With a ten-year final deadline for complying with a new, revised, or newly interpreted criterion or objective, most permittees should have the possibility (if otherwise eligible) of a five-year (or longer) compliance schedule.

Comment C.15:
We recommend that the compliance schedule be set for a time period that is "as short as practicable." The terminology proposed in the Draft Policy ("as soon as possible") fails to consider practical considerations such as financing, rules governing public contracts, compliance with the California Environmental Quality Act (CEQA), and other processes associated with major public capital improvement projects. (Comment letter 9.03).

Response C.15:
The proposed Policy states that compliance schedules can be granted for designing and constructing facilities or implementing new or significantly expanded programs. The proposed Policy further states that "Construction includes related activities such as the purchase of property needed for the construction, performance of the environmental studies and reviews, identification of social and environmental mitigation, and purchase and installation of necessary equipment." Thus, the wording "as soon as possible" takes into account considerations such as financing, rules governing public contracts, compliance with CEQA, and other processes associated with major public capital improvement projects. However, staff has further revised the Policy to make it clearer that such practical actions are included: "The State Water Board recognizes that a compliance schedule may be appropriate, in some cases, when a discharger **must implement actions to comply with a more stringent permit limitation, such as** design**ing** and construct**ing** facilities or implement**ing** new or significantly expanded programs and secur**ing** financing, if necessary, to ~~support these activities in order to~~ comply with permit limitations implementing new, revised, or newly interpreted **water quality objectives or criteria in** WQSs."

Comment C.16:
The proposed Policy unreasonably limits compliance periods to five years (with two extremely limited exceptions), unlike some of the existing regional compliance schedule provisions that potentially allow for ten-year compliance schedules. There is no evidence or analysis in the *Draft Staff Report* that justifies limiting compliance schedules to five years. In fact, the Division of Clean Water Programs at the State Water Board determined in 1994 that the entire timeline for a POTW to process a major treatment plant upgrade or construction project was about 11.8

years. The proposed five-year limit sets dischargers up for failure and also severely constrains regional Water Board flexibility for addressing pollutants on a watershed-basis. The most appropriate compliance choice would be to simply require “compliance as soon as possible” without arbitrarily limiting the length of compliance schedules by imposing an absolute time limit; however, we can support *Alternatives 2.c and 3.c* in the *Draft Staff Report*, which would allow up to 15 years for compliance. (Comment letters 2.03, 4.02, 5.05, 6.03, 8.04, 9.01, 12.02, 16.02, and 18.01).

Response C.16:
Please see response to Comment C.2. Furthermore, Water Boards always have the option of issuing enforcement orders for periods longer than the duration that is specified in this Policy.

D. Eligible Dischargers

Comment D.1:
We agree with the *Draft Staff Report*'s recommendation that new dischargers not be eligible for compliance schedules. We also agree with the proposed Policy’s definition of new and existing discharger with the following change: the words ", or new interpretation" should be deleted from both of these definitions. The mere new interpretation of an existing WQS should not trigger eligibility for compliance schedules. (Comment letter 7.10).

Response D.1:
Staff believes that it is reasonable to allow a NPDES compliance schedule to comply with a narrative water quality objective or criterion that, when interpreted during NPDES permit development to determine the permit limitations necessary to implement the objective, results in a numeric permit limitation more stringent than the limit in the prior NPDES permit issued to the discharger. Staff is further proposing to expand the definition of newly interpreted water quality objective or criterion to also includes a ***numeric or narrative*** water quality objective or criterion that is implemented with a permit limitation with which the discharger cannot comply because the pollutant was newly detected in the discharger’s effluent due to new analytical techniques that were developed after the prior permit was issued.

Comment D.2:
We support the recommended *Alternative 5.b*, defining "new" and "existing" dischargers based on the SIP definitions, which removes any ambiguity, providing clear guidance on the appropriate use of compliance schedules. (Comment letter 11.07).

Response D.2:
The support for the recommended *Alternative 5.b* is appreciated.

Comment D.3:
We recommend that the definition for "new dischargers" be revised to be consistent with federal regulations, so that compliance schedules are uniformly applied to new dischargers. A new discharger under federal law includes a discharger that has never received a finally effective NPDES permit. We recommend that the proposed Policy specify that discharges regulated by WDRs which are then required to be regulated by an NPDES permit (due to changes in the law or regulatory interpretation of what constitutes a "water of the United States/' rather than changes in discharge location) be allowed reasonably needed time to comply with any discharge requirements imposed under the NPDES permit that are more stringent than those in

the WDR. In such a situation, a compliance schedule would be appropriate. (Comment letter 12.09).

Response D.3:
Staff believes that it is more appropriate for the Policy definition for "new dischargers" to be based on the SIP definition, which has been widely used by permit writers throughout the State. The SIP definition for "new dischargers" was approved by USEPA, and is thus considered to be consistent with federal regulations.

The North Coast Water Board adopted a similar compliance schedule provision in 2004 that allowed NPDES compliance schedules for the situation described by the commenter (existing non-NPDES dischargers (operating under WDRs) that, under a new interpretation of law, are newly required to comply with new NPDES permit requirements). However, this provision was disapproved by USEPA, because they found that it was inconsistent with federal regulations at 40 CFR §122.47, which specifies the conditions for including a NPDES compliance schedule in the first NPDES permit. Staff agrees with USEPA's analysis, and is therefore not proposing to revise the Policy to allow for compliance schedules under this specified circumstance.

Comment D.4:
I suggest adding an *Alternative 5.c* to the *Draft Staff Report,* which would define "new" and "existing discharger" based on the USEPA definition. (Comment letter 15.07).

Response D.4:
Please see the response to Comment D.3, above.

E. Qualifying Standards and Limitations

Comment E.1:
Please clarify the terms "water quality standard" and "water quality objective", as the proposed definitions in the Policy could lead to confusion and legal wrangling (e.g., it is unclear whether a compliance schedule is appropriate following a new use designation for a receiving water). (Comment letter 1.01).

Response E.1:
Staff agrees that the use of the term "water quality standard" in the proposed Policy may be too broadly used and could be misinterpreted. We have therefore revised the Policy, where appropriate, to make it clear that compliance schedules are authorized to implement a new, revised, or newly interpreted "***water quality objective or criterion*** **in a water quality standard".**

Comment E.2:
For metals, please clarify whether a compliance schedule would be allowed under the proposed policy when: (1) new water quality objectives are developed; (2) site-specific translators are developed; (3) new hardness data changes objectives for hardness-dependent metals; and (4) site-specific water quality objectives are established. (Comment letter 1.02).

Response E.2:
In California, most metals of concern are regulated under the CTR, which was promulgated by the USEPA in 2000. A few metals, such as aluminum, are regulated under narrative objectives

in regional Basin Plans. Compliance schedules for all CTR constituents, including metals, are authorized only under the SIP and cannot be extended beyond 2010. This Policy does not authorize compliance schedules for permit limitations implementing existing CTR metals criteria under any circumstance, even when the application of new hardness data or site-specific translators result in more stringent permit limitations. The Policy does authorize compliance schedules for CTR criteria that are revised by the USEPA after the effective date of the Policy, if they result in more stringent permit limitations. The Policy also authorizes compliance schedules for new, revised, or newly interpreted non-CTR metals objectives (including site-specific objectives (SSOs) that result in more stringent permit limitations. Note that the Policy does not preclude a Water Board from authorizing a compliance schedule as part of a new or revised standard that is longer than what is authorized in the Policy, provided that the Water Boards adequately justify the compliance schedule length and the State Water Board and USEPA approve the standards action.

Comment E.3:
The proposed Policy should allow compliance schedules for permit limits that implement WQSs adopted under the National Toxics Rule (NTR) and the CTR and should extend the compliance deadline for CTR-based limits beyond May 18, 2010. NTR and CTR constituents pose some of the most problematic issues in NPDES permitting, and compliance schedules for these pollutants are just as important as for conventional pollutants. Having different compliance schedules for different pollutants promotes confusion and inconsistency.

Of special concern are CTR pollutants, such as PCBs and pesticides that have criteria that are orders of magnitude more stringent than currently approved test methods. As technology in analytical methods improves, these previously undetected pollutants may show up in detectable amounts and dischargers given an effluent limit – yet dischargers will not be eligible for compliance schedules, which is clearly unreasonable and unfair.

A possible solution would be for the State Water Board to adopt *Alternative 6.b.3* in the *Draft Staff Report* and change the proposed Policy definition of "newly interpreted water quality standard" to: "*a narrative **or numeric** water quality objective that, when interpreted during NPDES permit development...results in a **new or more stringent** numeric permit limitation ~~more stringent~~ than the limit in the prior NPDES permit issued to the discharger*." (Comment letters 2.04, 4.05, 5.06, 6.06, 12.07, and 16.05).

Response E.3:
The NTR has been in effect since December 22, 1992 and dischargers have now had a period of 16 years to comply with these criteria. To allow additional time to meet NTR criteria does not seem reasonable, and would be in conflict with the SIP, which was adopted in 2000 and which specifically stated that compliance schedules are not allowed for NTR constituents. In the SIP, the State Water Board considered and expressly rejected authorizing compliance schedules for NTR criteria, since the NTR criteria had at that time been in effect eight years and the State Water Board concluded that additional time was unnecessary.

The CTR was promulgated by USEPA on May 18, 2000. The SIP authorizes five-year compliance schedules for existing CTR constituents, which must be met by May 18, 2010. As discussed in the *Draft Staff Report*, staff considered whether the proposed Policy should supersede the SIP, but did not recommend it because (1) there is only two years left before the SIP compliance schedule provisions sunset; (2); the SIP and the proposed Policy are very similar, thus possibly revising existing SIP compliance schedules to conform with the proposed

Policy would yield very little benefit, but require Water Board and stakeholder resources; (3) revising existing SIP compliance schedules seemed unfair and confusing to permittees who are well underway towards reaching compliance.

The proposed Policy specifically states that compliance schedules are not authorized for permit limitations implementing existing NTR criteria. The Policy also very clearly states that compliance schedules for existing CTR criteria are *only* authorized under the SIP. The Policy also specifies that compliance schedules for permit limitations implementing a water quality objective that is identical to a CTR criterion and that was adopted after promulgation of the CTR may not extend beyond May 18, 2010. The proposed Policy furthermore does not authorize compliance schedules to comply with permit limitations that become more stringent due to "new interpretation" of *numeric* objectives OR criteria – including CTR criteria.

Nevertheless, to address the commenter's concern about pollutants newly detected in the effluent due to new analytical techniques or methods, staff proposes to expand the definition of "newly interpreted water quality objective or criterion in a water quality standard" as follows: "Newly interpreted water quality objective or criterion in a WQS also includes a numeric or narrative water quality objective or criterion that is implemented with a permit limitation with which the discharger cannot comply because the pollutant was newly detected in the discharger's effluent due to new analytical techniques that were developed after the prior permit was issued."

Comment E.4:
The proposed Policy allows compliance schedules only under very limited circumstances. Compliance schedules applies only to permits adopted or modified after the effective date of the Policy in situations where design, construction, or other major programs are necessary to comply with effluent limits based on new, revised, or newly interpreted WQSs. The Policy defines "newly interpreted" WQS as being limited to narrative standards that based on the interpretation during permit renewal result in more stringent effluent limits than in the prior permit. Compliance schedules would not be available for permits for new dischargers, permits limits based on NTR and CTR criteria, and permits where Regional Water Board compliance schedule policies were previously adopted. Compliance schedules would not be allowed for compliance with NTR or CTR waste load allocations (WLAs) or load allocations (LAs). Since very few standards would qualify as new or revised under the Policy's definition, it is anticipated that the Policy would allow compliance schedules only in the case of new interpretation of narrative standards. No compliance schedules would be allowed for existing numeric objectives, except in very few cases. It follows that compliance schedules will primarily be contained in Cease and Desist or TSOs, subjecting permittees to potential citizen suits and, after five years maximum, MMPs. Thus, in total this draft policy does little to provide for a constructive and effective statewide policy. We recommend modifying the Policy to allow permit compliance schedules whenever a new effluent limit that is more stringent than the prior limit is placed into the permit, and for any WQSs, irrespective of when they were adopted and including the CTR and NTR criteria. We also recommend modifying the definition for newly interpreted WQSs to include all water quality objectives not just narrative water quality objectives, including but not limited to basin plan, NTR and CTR objectives. (Comment letter 8.03).

Response E.4:
Please see response to Comment E.3, above. Staff believes that the proposed Policy would indeed provide an effective and consistent regulatory tool for allowing eligible dischargers more

time, where appropriate, to comply with new, revised, or newly interpreted water quality objectives or criteria. See also response to comment F3.

Comment E.5:
We recommend that that the Proposed Policy authorize NPDES compliance schedules for CTR criteria beyond May 2010 to accommodate newly imposed permit limitations and changing beneficial uses. The SIP authorizes compliance schedules only through May 18, 2010. New or more stringent permit limitations based on CTR criteria may be imposed in NPDES permits after May 2010 due to a variety of potential causes that are beyond the control of POTWs. Because it is our understanding that action on the part of USEPA would be needed to remove the 2010 sunset date under the CTR, we also recommend that the State Water Board request that the USEPA address this issue as well. (Comment letter 12.07).

Response E.5:
Please see response to Comment E.3, above.

Comment E.6:
We support *Alternative 6.b.3* of the *Draft Staff Report*, rather than the recommended *Alternative 6.b.2*, because it provides the necessary discretion to the Regional Water Board to address situations in the foreseeable future. We are in agreement with the examples provided in the staff report, but are especially concerned about the situation where the technology in analytical methods or instrumentation improves to the point where previous undetected pollutants show up in detectable amounts. This could be the case for PCBs and pesticides, which have CTR criteria that are orders of magnitude more stringent than currently approved test methods. A discharger may lack the incentive to pursue more sensitive test methods if a compliance schedule is not available. (Comment letters 3.07a and 12.08).

Response E.6:
Comment noted. Staff has addressed the issue of more sensitive analytical methods or instrumentation improving to the point where previous undetected pollutants show up in detectable amounts by revising the Policy (please see response to Comment E.3, above). If the permittee does not qualify for a NPDES compliance schedule, the Regional Water Board may issue a compliance schedule in an enforcement order to the permittee, if appropriate.

Comment E.7:
We urge the State Water Board to select either Alternative 6.b.1 or 6.b.3 in the *Draft Staff Report,* instead of *Alternative 6.b.2*, which applies only to newly interpreted *narrative* standards. The proposed Policy too narrowly defines a "newly interpreted" WQS to mean only those situations where *narrative* standards are replaced with *numeric* limits. As pointed out in the *Draft Staff Report,* this would prohibit compliance schedules for permits in which: (1) previously unregulated pollutants in a discharge are newly regulated because new data indicates reasonable potential for that pollutant; (2) improved analytical techniques result in new detections of a given pollutant in an existing discharge; (3) point of compliance for a receiving water limitation is changed; or (4) the dilution allowance for an existing discharge is changed. All of the examples above are situations where a specific discharger would either receive an effluent limit for the first time, or a more restrictive limit than in its existing permit. In neither circumstance has the discharger been given an opportunity to achieve compliance with the newly-interpreted *numeric* limit, and it is both reasonable and fair to provide a compliance period to enable the discharger to meet it. Not allowing a compliance schedule for these situations is

akin to adopting a new standard altogether, and expecting the discharger to meet it immediately. (Comment letters 4.08 and 5.03).

Response E.7:
Comment noted. Please see response to Comment E.3, above, regarding the situation where improved analytical techniques resulting in new detections of a given pollutant in an existing discharge. Staff revised the proposed Policy to accommodate this situation. Under the other scenarios described by the commenter (and as noted in the *Draft Staff Report*), a permittee would not qualify for a NPDES compliance schedule, but the Regional Water Board would have the option of issuing a compliance schedule in an enforcement order to the permittee instead (if appropriate otherwise).

Comment E.8:
The proposed Policy should allow compliance schedules for new narrative standards imposed through industrial storm water permits, which are subject to all requirements of CWA Section 301. These permits are customarily not expressed in terms of storm water dischargers meeting a numeric limit at a given discharge point, but are based upon implementing best management practices (BMPs) through an iterative process. What constitutes BMPs may change with time and experience and, if new or modified BMPs are indicated, it may take time to develop and implement them. Compliance schedules may therefore be necessary. However, the definition of "newly interpreted" WQS in the proposed Policy would mean that an industrial storm water discharger would be eligible for a compliance schedule *only* for a permit limit where a narrative standard results in a *numeric* permit limit, not when it results in more stringent *narrative* standards - including imposition of new BMPs to achieve those standards. It seems appropriate for the discharger to receive a reasonable amount of time to develop, construct, implement and confirm effectiveness of those new measures. We believe this issue could be accomplished by revising *Finding 1.e* of the proposed Policy as follows: "'Newly interpreted water quality standard' means a ~~narrative~~ water quality objective that, when interpreted or applied during NPDES permit development…to determine the permit limitations necessary to implement the objective, results in a **new permit limitation or a** ~~numeric~~ permit limitation more stringent than the limit in the prior NPDES permit issued to the discharger." (Comment letters 4.09, 5.02).

Response E.8:
Comment noted. However, staff do not believe it appropriate for this Policy to authorize NPDES compliance schedules to implement BMPs.

Comment E.9:
The proposed Policy applies to all NPDES permits required to comply with CWA §301. This includes industrial storm water permits (including the General Industrial Permit and General Construction Permit), but not municipal storm water permits (MS4s). We recommend that the State Water Board, upon the adoption of this Policy, consider the complex issue of shaping a compliance schedule policy to address municipal storm water management and, in the interim, consistent with Orders WQ 99-05 and 2001-15, through an addition to this Policy or otherwise, expressly authorize the continued use of the iterative process in addressing WQS compliance in the context of MS4 permits (unless a superseding pollutant-specific, compliance schedule has been adopted in a TMDL). (Comment letter 8.02).

Response E.9:
Comment noted. Addressing compliance schedule provisions for municipal storm water permits is, however, outside the scope of this particular Policy.

Comment E.10:
Resolves 2.b. and 2.c of the proposed Policy appears to exclude from consideration for compliance schedules any NPDES permit regulating NTR and CTR toxic pollutants, including storm water discharge permits. However, storm water discharges are not subject to the CTR implemented through the SIP. Therefore, *Resolve 2* of the proposed Policy should clarify that storm water discharges regulated by NPDES permit will be eligible for compliance schedule consideration even if the discharge may contain CTR constituents. (Comment letter 13.01).

Response E.10:
The proposed Policy explicitly does not authorize compliance schedules for permit limitations based on existing NTR and CTR criteria for the reasons described in response to Comment E.3. This includes permit limitations for storm water discharges regulated by NPDES permits.

Comment E.11:
We are concerned that the proposed Policy would limit the use of compliance schedules to where the new, revised, or newly interpreted WQS is more stringent than the existing standard. The proposed Policy and *Draft Staff Report* provides no justification or authority for limiting the use of compliance schedules in this manner. The CWA does not limit the application of compliance schedules to new or revised water quality objectives that are more stringent. USEPA has approved Basin Plan compliance schedule provisions that do not limit compliance schedules to new or revised objectives that are more stringent. In *Communities for a Better Environment* v. *State Water Resources Control Board* (2005), the California Court of Appeal upheld a trial court decision that found compliance schedules are authorized when the State adopts a new or revised interpretation of an existing WQS without caveats to the relative stringency of the new or existing objectives. The key consideration for allowing compliance schedules in NPDES permits should be if the newly revised, interpreted or applied standard results in a *new or more stringent effluent limit* than what was in the previous NPDES permit, not that there is a *new, more stringent standard*.

As such, we recommend that the State Water Board select *Alternative 6.b.3* in the Draft Staff Report and include the examples identified under this alternative in the Policy definition for "newly interpreted" WQS. In addition, we recommend that the list of examples be expanded to include a scenario where the beneficial use designations for a specific receiving water may be newly applied or interpreted resulting in newly applied numeric limitations to a permittee for the first time. (Comment letter 6.02).

Response E.11:
Staff generally agrees that the key consideration for allowing compliance schedules in permits is whether the new, revised, or newly interpreted WQS results in a new or more stringent permit limitation. We have revised the policy language to state that schedules are authorized where new, revised or newly interpreted WQSs result in more stringent permit limitations. We have also added a definition of "more stringent" to clarify that "more stringent" limitations include new permit limits for pollutants that were previously not limited. However, from a policy standpoint, the State Water Board considers it inappropriate to authorize compliance schedules where a standard has been relaxed and the new permit limitations are less stringent that limitations based on the prior, more stringent standard. Therefore, Resolve Clause #2.e. has been revised to state that schedules are not authorized for permit limitations implementing revised standards where the new limitations are less stringent than limitations based on the prior standard.

The commenter also requests that the definition of "newly interpreted" WQS be expanded to include newly interpreted numeric objectives. Based on the comments received, staff proposes to revise the definition to include the new interpretation of numeric objectives, under the limited circumstance where a discharger cannot comply with a permit limitation because a pollutant was newly detected in the discharger's effluent due to new analytical techniques. The State Water Board has the discretion to further expand the definition; however, this is a policy call.

Comment E.12:
The fact sheet states that the policy applies to permits implementing “new, revised, or newly interpreted water quality standards that are *more stringent* than water quality standards previously in effect." The policy itself states that compliance schedules are not authorized for permit limitations implementing new, revised, or newly interpreted WQSs that are *less stringent* than WQSs previously in effect. This may be a subtle distinction, but we would recommend that the language be the same. Additionally, in some situations it could be difficult to determine whether a new standard is more stringent, e.g., a change from dissolved to total metals or vice-versa, a change from fecal coliform to e. coli or enterococcus, a change from a water-column standard to a fish-tissue standard. It is not clear whether a compliance schedule would be allowed for these situations. Please clarify. (Comment letter 17.05).

Response E.12:
We have revised the language in the proposed Policy to state that compliance schedules are allowed for new, revised, or newly interpreted water quality objectives or criteria that result in permit limitations that are more stringent than the previously-imposed limitation. In addition, the language has been revised to preclude compliance schedules where a water quality objective or criterion is relaxed and the resulting permit limitations are less stringent than limitations based on the prior more stringent objective or criterion. The Water Boards will have to determine whether a permit limitation is more stringent on a permit-specific basis. See also response to Comment E.11 above.

Comment E.13:
The proposed Policy would apply to permits within existing permit term, if reopened. In such cases, the proposed Policy does not clarify if the new compliance schedule provisions would only apply to changes to the reopened permit or if the new provisions would apply to all provisions within the permit. Under the latter scenario, many existing permits with legally valid compliance schedules could be reopened and the legally adopted schedules could be eliminated or revised to reflect the limitations contained in the proposed Policy. At the very least, the proposed Policy should apply only prospectively and all existing compliance schedules should be recognized and grand-fathered in by the proposed Policy. To do otherwise, creates uncertainty and may constitute a violation of due process. (Comment letters 6.04 and 18.07).

Response E.13:
Staff does not generally believe that it is good use of Water Board resources, nor fair to permittees, to reopen permits with existing compliance schedules for the sole purpose of ensuring that these schedules meet all requirements of the proposed Policy. Staff is therefore proposing to add a clause to the Policy (a new Resolve 3) that specifically states that “The Policy shall not apply to existing compliance schedules in permits that are in effect on the effective date of the Policy. Under no circumstances, however, can a compliance schedule that is in effect on the date of the Policy exceed ten years from the initial date that the compliance schedule was first included in the permit.”

Comment E.14:
I suggest adding an *Alternative 6.c* to the *Draft Staff Report,* which would state that existing compliance schedules in NPDES permits that were authorized by the Water boards prior to the effective date of this Policy will continue to be authorized with a "newly interpreted" WQS definition. (Comment letter 15.09).

Response E.14:
Staff is not sure what this comment means. Please see response to Comment E. 13, above.

Comment E.15:
Because of prior abuse, compliance schedules should not be allowed for newly interpreted WQS. (Comment letter 7.09).

Response E.15:
Comment noted. Staff believes that the definition for "newly interpreted water quality objective or criterion" is sufficiently narrowly framed to avoid being abused.

Comment E.16:
We support the combined recommendations of *Alternatives 6.a.2 and 6.b.2*, which will assure that any compliance schedules that are already established will remain in effect for most of the regions and clearly defines what is meant by "newly interpreted" WQSs. (Comment letter 11.08).

Response E.16:
Comment noted. The support for the staff recommended alternatives is appreciated.

Comment E.17:
The proposed Policy should not exclude alternative compliance strategies, such as development of TMDLs, SSOs, use attainability analyses (UAAs), water effects ratio (WER) analyses, translator studies and similar approaches that better define WQSs for a specific water body. The proposed Policy only allows compliance schedules when the discharger must design and construct facilities or implement new or significantly expanded programs and secure financing, if necessary, to support these activities in order to comply with permit limitations. This restriction, which is not required under federal law, would be a substantial change to existing Regional Water Board policies, which merely require a discharger to demonstrate that it is not feasible to achieve immediate compliance. This is a critical issue for many dischargers around the state. The State Water Board should favor a statewide policy that encourages non-construction, alternative means of compliance with WQSs, particularly at a time when state and local budgets are exacerbated and reduction of greenhouse gas emissions is of paramount concern. We acknowledge that USEPA Region IX has opined that granting compliance schedules to dischargers to allow time to pursue these types of alternative compliance strategies does not meet federal requirements, but there is nothing in the CWA or the Federal Regulations which support this opinion. Furthermore, the State Water Board has issued two precedential decisions that go against USEPA's opinion and supports the use of alternative compliance strategies to achieve WQSs (*In re: Tosco,* (2001) and *In* re: *City* of *Vacaville (2002)).* The State Water Board has historically recognized that alternative compliance strategies have a place in water quality compliance efforts, and by extension, that these efforts should be given appropriate time periods within which to be pursued. We therefore suggest that the following language be added to *Resolve Nos. 6 and 9* and Findings Nos. 2, 3, and 4: "... or to gather additional data or conduct additional studies necessary to evaluate alternative means

of establishing and meeting appropriate effluent limitations." (Comment letters 2.02, 4.03, 5.04, 6.01, 8.05, 12.03, 16.03, and 18.02).

Response E.17:
The CWA defines a compliance schedule as "a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation . . . ." (33 U.S.C. sec. 1362(17).) USEPA interprets this definition to contemplate "an enforceable series of actions by the permittee that will result in compliance with a final water quality-based effluent limitation in an NPDES permit." (Letter, dated October 23, 2006, from Alexis Strauss, Director, Water Division, USEPA, Region IX, to Celeste Cantu, former Executive Director, State Water Board re "California SIP, compliance schedule provisions" (Strauss letter), p. 3.) As the commenter acknowledges, USEPA has now clearly taken the position that compliance schedules based solely on the time needed to develop a TMDL, UAA or SSO are inconsistent with the statutory definition and are not allowed. (See "California Permit Quality Review Report on Compliance Schedules," USEPA, Region IX (October 31, 2007); Strauss letter.)

To the extent that prior State Water Board orders suggested that compliance schedules are appropriate to allow time for WQSs-related actions, those orders are inconsistent with USEPA's current position. Nevertheless, the proposed Policy has been revised to clarify that schedules are authorized when the discharger must implement actions to comply with permit limits implementing a new, revised or newly interpreted standard. The actions may consist of design and construction, operational measures, source control or other actions by the discharger. The permissible actions do not preclude the development of WERs by a discharger on a permit-specific basis.

Further, nothing in the proposed Policy should be construed as precluding or discouraging alternative compliance strategies. The discharger is free to pursue any permissible means of achieving compliance with permit requirements, including participating in studies to support UAAs, TMDLs, or SSOs to revise the applicable WQS, if appropriate. The policy addresses only when compliance schedules are appropriate in a permit. If a discharger wishes to pursue another regulatory strategy, the discharger is free to do so. If a compliance schedule in a permit is not viable, the Water Board can issue an enforcement order, if appropriate, to provide the discharger the needed time to complete the alternate strategy.

Comment E.18:
As the *Draft Staff Report* underscores, USEPA disapproved the provision of the SIP that authorized compliance schedules to allow for time to develop TMDLs. To ensure that the Regional Water Boards do not in the future unlawfully issue compliance schedules to allow for time to develop TMDLs, SSOs, or UAAs, the proposed Policy should be amended to expressly forbid the issuance of compliance schedules on this basis. (Comment letter 7.14).

Response E.18:
Please see response to comment E.17, above. The Policy has been revised to state that “compliance schedules are not authorized based solely on the time needed to develop a TMDL, use attainability analysis, or site specific objective”.

Comment E.19:
The Fact Sheet and Finding 9 of the proposed Policy implies that if a discharger does not have plans to design or construct facilities, a compliance schedule is not warranted. In some cases,

the health and safety of nearby residents is best served by allowing the discharge, even when the discharger has no plans to construct facilities. (Comment letter 3.03).

Response E.19:
Please see response to comment E.20, above.

F. TMDLs

Comment F.1:
We support the recommended *Alternative 4.c*, which adopts a compliance schedule policy that specifically allows additional time to comply with the NPDES permit limitations that are based on a TMDL. This will facilitate needed data gathering efforts, which often take many years to complete which is essential for TMDL compliance. (Comment letter 11.06).

Response F.1:
The support for the recommended policy alternative is appreciated.

Comment F.2:
I support *Alternative 4.a* of the *Draft Staff Report.* (Comment letter 15.06).

Response F.2:
Comment noted. The commenter did not specify a reason for the support of *Alternative 4.a.*

Comment F.3:
Resolve 2.c of the proposed Policy states that compliance schedules are not authorized under the Policy for permit limitations implementing criteria promulgated in the CTR, as those are covered by the SIP. This suggests, but does not specify that if a discharger receives a WQBEL based on a WLA in a TMDL implementing a CTR criterion, and that WQBEL is more stringent than a previous CTR-based WQBEL, a compliance schedule would not be available. We recommend this be clarified. (Comment letter 17.04).

Response F.3:
The proposed Policy does not authorize compliance schedules for permit limitations based on CTR criteria. If a TMDL is adopted to achieve compliance with a CTR criterion, the TMDL implementation plan may include a compliance schedule provision. That provision would have to be separately approved by USEPA because it would not fall under the proposed Policy.

Comment F.4:
Page 51 of the *Draft Staff Report* states that “Compliance schedules to achieve water-quality based NPDES permit limitations based on TMDLs must be as short as possible (as determined in the TMDL support document)...." USEPA agrees that all compliance schedules must be as short as possible, as required by USEPA regulations at 40 CPR 122.47. However, as discussed in USEPA's recent permit audit, the "as soon as possible" determination should be made at the permit stage. In some cases, it may be that the "as soon as possible" analysis in the TMDL implementation plan will serve as the basis for the "as soon as possible" determination for a particular permit. However, given the time that can pass between TMDL and permit adoption, along with the possibility that meeting effluent limitations “as soon as possible” may differ among different permittees, the permitting authority should revisit the "as soon as possible" determination when each specific permit is developed. (Comment letter 17.08).

Response F.4:
Staff agrees that the "as soon as possible" determination should be made at the permit stage, as this may well differ for each permittee and facility, and could be significantly shorter than the maximum length specified in the TMDL implementation plan for compliance schedules. Staff will revise the *Draft Staff Report* to clarify this intent.

Comment F.5:
We strongly support allowing more than ten years to comply with permit limits that implement or are consistent with WLAs in a TMDL. However, the Policy is ambiguous as to the allowable duration of such compliance schedules. The Policy indicates that the compliance schedule in a permit cannot exceed that maximum length specified in the TMDL for compliance schedules. However, it appears that Regional Water Boards would have discretion to depart from the duration of compliance schedules as already set forth in the adopted TMDL implementation plan, under the general rule that compliance schedules "must be as short as possible." We believe that Regional Water Boards and others should not be able to revisit the issue under the rubric of keeping compliance schedules “as short as possible” or establishing interim limits or milestones. We therefore recommend that the Policy just simply states that the duration and requirements be consistent with the TMDL and its implementation plan. (Comment letter 18.06).

Response F.5:
Staff believes that it is appropriate for the "as soon as possible" determination to be made at the permit stage, as this may well differ widely for each permittee and facility (see also Comment F. 4, above, and staff’s response). As noted by the commenter, the Policy further specifies that compliance schedule in a permit cannot exceed that maximum length specified in the TMDL for compliance schedules.

Comment F.6:
The State Water Board Executive Director stated in 2000 that additional time should be granted NPDES permittees while developing TMDLs, so that the high cost of “physical plant improvements required to comply with effluent limits may be delayed until such limits are confirmed or revised by establishment of a TMDL.” Likewise, the SIP included a pre-TMDL compliance schedule provision allowing up to 15 years to complete a TMDL and another five years to comply with TMDL-derived effluent limits, with performance-based interim limits and commitment to support TMDL development as interim requirements during the course of the compliance schedule. Yet the proposed Policy limits compliance schedules to five years (with the possibility of a limited five-year extension). We recognize that this is based on USEPA's 2006 letter disapproving the pre-TMDL compliance schedule provisions of the SIP, but this represents a change in that agency's previous position on this issue. Indeed, the idea of pre-TMDL compliance schedules appears to have originated with USEPA (see the Tasco Order). The interpretation of the law by the State Water Board, the Court and even USEPA, at that time, remains correct. It is true that USEPA eventually in 2006 rejected the pre-TMDL compliance schedule provisions of the SIP, though only after the agency was sued by Baykeeper et al. in August 2006. Since that suit was settled, however, without adjudication of the plaintiffs' claims, the *CBE v. State Board* decisions remain the controlling case law. (Comment letter 18.03).

Response F.6:
Please see response to comment E.20. Under the proposed Policy, a Water Board may establish a compliance schedule that exceeds ten years for permit limitations based on WLAs in a TMDL, with the caveat that the compliance schedule in the permit cannot exceed that

maximum length specified in the TMDL for compliance schedules. If a TMDL has not yet been established, it is true that the proposed Policy limits NPDES compliance schedules to ten years. However, enforcement orders may contain longer compliance schedules.

G. Prohibitions

Comment G.1:
We support the recommended *Alternative 7.a*, which does not specifically authorize compliance schedules for NPDES permit limitations implementing prohibitions. This is a very reasonable decision that does not preclude the Water Boards from adopting conditional prohibitions at a later date. (Comment letters 7.11, 11.09, and 15.10).

Response G.1:
Comment noted. Staff appreciates the support for the recommended alternative.

Comment G.2:
As the *Draft Staff Report* points out, most compliance schedule authorizing provisions in Basin Plans do not allow compliance schedules for NPDES permit limitations implementing prohibitions and the State Water Board should not backslide to create more polluter-generous provisions than currently exist. To the extent that current prohibitions in Basin Plans are seen as unduly stringent, the proper response is to amend them, following the rigorous public participation procedures for such amendments, rather than create compliance schedule loopholes for ignoring their dictates. (Comment letter 7.11).

Response G.2:
As the commenter points out, the proposed Policy does not apply to prohibitions. However, to clarify why the proposed Policy does not apply to prohibitions, staff has added the following Finding to the draft Resolution: “This Policy does not specifically authorize compliance schedules for prohibitions. The State Water Board finds that it is unnecessary to authorize compliance schedules for prohibitions because the Water Boards are authorized to adopt prohibitions that are not effective immediately, but rather at a specified future date.”

Comment G.3:
We urge the State Water Board to select *Alternative 7b*. The proposed Policy should apply to prohibitions if they are imposed to achieve WQSs. Both the CWA and Porter-Cologne recognize that prohibitions imposed by a Regional Water Board in a permit are, by nature, limits that are intended to protect or meet WQSs. This issue has widespread application beyond the North Coast Region and there is no compelling reason to exclude prohibitions from the application of the Proposed Policy. The rationale offered by staff - because it "is most similar to already existing regional compliance schedule provisions and is more conservative" – is hardly persuasive. (Comment letter 4.10).

Response G.3:
Please see response to Comment G.2, above.

Comment G.4:
The proposed Policy definition of “permit limitation” eliminates the use of compliance schedules for other permit provisions including compliance with prohibitions. The proposed approach is not mandated by federal law or regulation and conflicts with the CWA definition of compliance schedule, which is "a schedule of remedial measures including an enforceable sequence of

actions or operations leading to compliance with an effluent limitation, limitation, prohibition, or standard." The *Draft Staff Report* justifies the narrowing of existing federal authority because it is more conservative and Regional Water Boards may adopt conditional prohibitions with delayed effective dates. We do not believe this reasoning supports narrowing existing federal authority, and thus unnecessarily eliminating Regional Water Board flexibility when it adopts NPDES permits. We recommend that the proposed Policy be revised to be consistent with federal authority. (Comment letter 6.05).

Response G.4:
Please see response to Comment G.2, above. By not specifically authorizing compliance schedules for prohibitions, the proposed Policy is ***not*** limiting the flexibility of Regional Water Boards to issue NPDES compliance schedules for prohibitions, but is rather allowing the Regional Water Boards more flexibility. When adopting a future prohibition, the Regional Water Boards may choose when the prohibition goes into full effect.

H. Application Requirements

Comment H.1:
I support *Alternative 8.f* of the *Draft Staff Report.* (Comment letter 15.11).

Response H.1:
Comment noted. Staff appreciates the support for the recommended alternative.

Comment H.2:
We do not support the recommended *Alternative 8.f*, because we do not believe that a discharger will not be able to provide the following required information: "The highest discharge quality that can reasonably be achieved until final compliance is attained". It is not feasible to expect data on the highest discharge quality without first conducting pilot-tests. The time required to test and gather data may pre-empt facilities from meeting the time constraints in the compliance schedule, especially for complicated or phased projects. (Comment letter 11.10).

Response H.2:
If a discharger cannot supply data regarding the highest discharge quality that can reasonably be achieved until final compliance is attained, interim limitations cannot be set, and an enforcement order may be more appropriate for this discharger.

Comment H.3:
We do not support the recommended *Alternative 8.f*, because we do not believe that a discharger will not be able to provide the following required information: "The proposed schedule is as short as practicable, given the type of facilities being constructed or programs being implemented, and industry experience with the time typically required to construct similar facilities or implement similar programs". This statement has left out the ability for the discharger to consider the economic, technical, and other relevant factors. The omission of economic, technical, and other relevant factors, creates a broad, undefined gap as to what is as short as practicable and how can this be determined. (Comment letter 11.11).

Response H.3:
To make it more clear that the Water Boards are not specifying the manner of compliance with permit limitations and that time may be allowed to finance construction, etc., staff has revised

the wording of Finding 9 to read “It is the intent of the State Water Board that compliance schedules for NDPES permits only be granted when the discharger must implement actions to comply with a more stringent permit limitation, such as designing and constructing facilities or implementing new or significantly expanded programs and securing financing, if necessary, to comply with permit limitations implementing new, revised, or newly interpreted water quality objectives or criteria in water quality standards, and that any schedules be granted for the minimum amount of time necessary to achieve compliance.” The Policy further states in a footnote that “Construction includes related activities such as the purchase of property needed for the construction, performance of the environmental studies and reviews, identification of social and environmental mitigation, and purchase and installation of necessary equipment.”

Comment H.4:
We support *Alternative 8.c.,* which is based on the current Los Angeles Basin Plan and allows for the documentation of discharge quality that can reasonably be achieved until final compliance and also allows for consideration of "economic, technical, and other relevant factors" in order to prove that the schedule is as short as practicable. (Comment letter 11.12).

Response H.4:
Comment noted. Please see response to Comment H.3 above.

Comment H.5:
We agree that the proposed Policy should specify detailed criteria that a discharger must meet to be eligible for compliance schedules. However, the proposed Policy is insufficiently detailed and prescriptive in this respect. As both the USEPA Permit audit and the State Water Board's EBMUD Decision underscore, the Regional Water Boards have been routinely issuing compliance schedules to dischargers that have failed to demonstrate eligibility for such compliance schedules under existing compliance schedule provisions in the SIP or Basin Plans.

We therefore urge the State Water Board to add the following additional provisions to the proposed Policy to ensure that Regional Water Boards only issue compliance schedules when clear evidence in the administrative record shows: (a.) The discharger cannot immediately comply with the WQBEL given specific technical and/or financial obstacles to immediate compliance; (b.) The discharger will comply with the WQBEL at the end of the compliance schedule requested, i.e., the discharger has a planned course of remedial action to come into compliance with the WQBEL; (c.) The compliance schedule has been limited to the shortest possible time for the discharger to implement its planned course of remedial action for complying with its WQBEL; (d.) Issuance of a compliance schedule is "appropriate" within the meaning of 40 CFR section 122.47(a) taking into account the following factors: (i) the time the discharger has already had to meet a comparable WQBEL under a prior permit; (ii) the extent to which the discharger has made good faith efforts to comply with its prior NPDES permit; (iii) whether there is any need for modifications to the discharger's existing treatment facilities, operations or measures to meet the WQBEL or whether the discharger could instead better use its existing treatment facilities, operations, etc.; and (iv) whether allowing the discharger to discharge pollutants above its WQBEL for the length of the compliance schedule will cause substantial environmental harm (as is presumptively the case if the discharge would be of a pollutant to water already listed as impaired); and (e.) The compliance schedule requires the discharger, by (a) specified date(s), to limit its interim pollutant discharge until final compliance is attained to the lowest level possible for the discharger (possibly including a series of staggered reductions in pollutant discharge level). (Comment letter 7.12).

Response H.5
Staff does not believe that the suggested language would add further clarity to the recommended application requirements in the proposed Policy. Staff believes that the factors mentioned by the commenter are already addressed clearly in the Policy. Regarding the possibility of a series of staggered reductions in pollutant discharge level, please see response to Comment I.5 below.

Comment H.6:
We agree that the Regional Water Board should do a thorough job in evaluating information submitted by the discharger in its application; however, we believe the burden of proof should be on the Discharger to provide adequate justification for the need to obtain a compliance schedule. Therefore, we request that Resolve 4 be modified as follows: "The Water Board is responsible for thoroughly evaluating the information submitted by the discharger in its application ~~and, in particular,~~ **The Discharger is responsible** for ensuring that the ~~discharger~~ **information provided in the application** has adequately demonstrated the need for time to design and construct facilities**;** or implement new or significantly expanded programs**;** and**,** secure financing, if necessary..." (Comment letter 3.10).

Response H.6:
While staff agrees that it is the responsibility of the discharger to provide the application information, staff does not recommend changing the Policy language.

Comment H.7:
Please clearly address the timing of discharger requests for compliance schedules and interim limits. With the time and labor burdens of reopening permits, it would be good to limit that window to the period of permit issuance or reissuance. (Comment letter 1.03).

Response H.7:
In general, the State Water Board anticipates that the Water Boards will address compliance schedules when permits are reissued. However, the Water Boards have the discretion to consider compliance schedules when permits are reopened. We believe that it is preferable for the Water Boards to retain the flexibility to addresses schedules either upon permit reissuance or when reopening permits. Note that, under the federal permit regulations, permit modification is discretionary, not mandatory.

Comment H.8:
We would like clarification regarding the time when the Discharger is supposed to apply for a compliance schedule. Is it at the time of submittal of their Report of Waste Discharge (ROWD) for their permit renewal, or is it as soon as analytical data shows that a pollutant is persistently present in their effluent at levels that exceed a water quality objective? Also, how long will Regional Water Board staff have to review the Discharger's request for a compliance schedule? ROWDs have to be reviewed for completeness within 30 days of receipt. (Comment letter 3.11).

Response H.8:
Please see response to Comment H.7, above.

Comment H.9:
The Policy should specifically address whether compliance schedules and interim limits are appropriate for general permits. If so, the Policy should specifically state that a permit writer

must have enough information about the group of dischargers to satisfy the application requirements (Comment letter 1.05).

Response H.9:
The proposed Policy does not preclude the use of compliance schedules for general permits. However, it is unlikely that compliance schedules would be used in a general permit because it is unlikely that the entire regulated group would need or qualify for a schedule. If a schedule were authorized, the Water Board would have to have sufficient information to conclude that the group met the application requirements.

Comment H.10:
The proposed Policy does not allow sufficient flexibility for situations that implement TMDLs and other specific basin planning actions. Specifically, the application requirements do not allow for situations where studies are required prior to identification of treatment or control measures. For example, under the proposed [Sacramento Delta]methylmercury TMDL, dischargers cannot propose time schedules to meet methylmercury requirements for at least eight years after the TMDL is adopted because the proposed implementation plan requires dischargers to participate in studies on how to control their methylmercury. Until those studies are completed, the dischargers will not know when or how they will comply. We therefore recommend that *Resolve 3.c*. be revised as follows: "A proposed schedule for additional source control measures or waste treatment**. If the discharge is subject to a TMDL or Basin Plan implementation program that contains a compliance schedule or implementation schedule requiring specified actions that must be taken before the discharger can determine what additional source control measures or waste treatment are necessary to meet LAs or other requirements, the proposed schedule need not identify additional measures or treatment nor propose due dates for completion of the additional measures or treatment: In such case the permit shall include an appropriate reopener, or the Water Board shall adopt revised schedules in future permits in accordance with 5.c or d, as applicable**; (Comment letter 10.02).

Response H.10:
Staff believes that the application requirements of the proposed Policy is flexible enough to accommodate most situations that implement TMDLs. However, NPDES compliance schedules are intended for situations where interim numeric limitations can be established, where the final permit limitations are known, and a timetable can be laid out for completing specific actions needed to comply with these final permit limitations. While studies can be part of the compliance schedule, the schedule must lay out a timetable for the actions necessary to achieve compliance. If this cannot be accomplished, an enforcement order is more appropriate.

I. Permit Requirements

Comment I.1:
I support the recommended *Alternative 9.c* of the *Draft Staff Report.* (Comment letter 15.12).

Response I.1:
Comment noted. The support of the recommended alternative is appreciated.

Comment I.2:

We do not support the recommended *Alternative 9.c* in the *Draft Staff Report* due to ambiguous wording and unclear ramifications. *Alternative 9.c* states that "the entire compliance schedule, including interim requirements and final permit limitations, shall be included as enforceable terms of the permit, whether or not the final compliance date is within the permit term." It is our understanding that interim requirements and final permit limitations are always enforceable when written into a permit. The wording is ambiguous and can be understood to mean that the old permit is still enforceable even if the permit has been renewed and the old permit rescinded. We believe that if a permit is renewed and another permit adopted in its place, then the permit requirements, if not met within the first permit term, need to be renegotiated or carried over to the renewed permit and all terms in the old permit expire. Please clarify the intended meaning. We support *Alternative 9.b*., because it complies with the stated objectives of the State Water Board, without inclusion of language that is unclear. (Comment letter 11.13-14).

Response I.2:
Comment noted. Staff does not believe the wording "the entire compliance schedule, including interim requirements and final permit limitations, shall be included as enforceable terms of the permit, whether or not the final compliance date is within the permit term" to be ambiguous. Clearly, when an old permit is rescinded, it is no longer enforceable.

Comment I.3:
Often there are no existing limits, and limited data reflecting treatment performance, when deriving interim limits for CTR pollutants for smaller dischargers. A single data point may result in a finding of reasonable potential and a need for limits. Please consider circumstances of limited data and indicate whether the limited data should be used to establish an interim limit or whether there is an alternative. (Comment letter 1.04).

Response I.3:
The State Water Board may, in the future, consider developing more detailed guidance on the calculation of interim limits. For now, however, the Water Boards will have to use any available, credible data to develop interim limits.

Comment I.4:
Regional Water Board staff requests clarification as to the appropriate method for calculating numeric interim limits, with respect to Resolve 6.b. Regional Water Board staff has in the past used the 95th percentile or the 99th percentile to calculate performance-based numeric interim limits, or used the maximum effluent concentration detected, but Dischargers have raised the issue of not being able to recreate our calculations. It would be helpful if the State Water Board could standardize a methodology for calculating numeric interim limits, so that the process is uniform in all of the Regions. (Comment letter 3.12a).

Response I.4:
Please see response to Comment I.3, above.

Comment I.5:
The proposed Policy states that numeric interim limitations must be based on current treatment facility performance or on existing permit limitations, whichever is more stringent, and that the interim requirements must be included as enforceable terms of the permit. Often as a facility implements phased upgrades, or as technologies are brought online, the option of "stepping down" the interim effluent limitations toward the final effluent limitation is available. However, under the proposed Policy, the only apparent way to adjust the interim limitations downward

(which will benefit the receiving water), is to reopen the permit. The Policy should be revised or clarified to allow a Regional Water Board multiple, phased, interim limitations consistent with the expected performance of phased upgrades (where phased upgrades are planned). (Comment letters 3.04 and 7.12-3).

Response I.5:
Staff agrees. Staff revised the proposed Policy (Resolve 7.b) to allow a Water Board multiple, phased, interim limitations by specifying that "Numeric interim limitations for the pollutant must, **at a minimum**, be based on current treatment facility performance or on existing permit limitations, whichever is more stringent."

Comment I.6:
Interim milestones should be flexible enough to accommodate changes that may occur over the compliance schedule period. While we do not *per se* object to the imposition of general interim requirements (including interim effluent limitations), we are concerned about the impact of unforeseeable changes on a permittee's ability to comply with detailed, inflexible interim requirements. Water Code section 13360 prohibits the Regional Water Boards from specifying a permittee's manner of compliance; therefore, we presume that interim limitations will not set forth enforceable detailed requirements as to *how* a permittee is to comply with final limitations, with corresponding dates for completion of each step. Given the fluid nature of construction projects, which are prone to daily/monthly scheduling changes, permittees need some relief from inflexible internal deadlines, as long as final limitations are met by the conclusion of the compliance schedule. We would appreciate clarification on this issue. (Comment letter 12.10).

Response I.6:
We agree that Water Code section 13360 prohibits the Regional Water Boards from specifying a permittee's manner of compliance; however, compliance is not optional. Furthermore, the proposed compliance schedule with suggested interim actions and deadlines is provided by the permittee when applying for a NPDES compliance schedule, not the Regional Water Board. NPDES compliance schedules are optional, not required, and a permittee may choose to not apply for a NPDES compliance schedule with the restrictions that it involves. However, staff agrees that some flexibility is needed in the compliance schedule to accommodate minor changes; this can be provided by requesting/allowing sufficient time for each interim stage.

Comment I.7:
We agree with the *Draft Staff Report*'s recommendation that compliance schedules in NPDES permits must include interim requirements and dates for their achievement, but these requirements could be strengthened and clarified. As written, it is unclear whether NPDES permits must include not only interim effluent limits, but also specific remedial measures. The Draft Policy also does not clearly state that setting interim effluent limits equal to a discharger's current performance is not permissible if the discharger can feasibly meet more stringent interim limits. We urge the State Water Board to amend *Finding 6* of the proposed Policy to specify (1) that any compliance schedule should mandate a specific schedule for implementing the actions that comprise the discharger's planned course of remedial action for complying with its WQBEL, and, (2), if a compliance schedule exceeds one year, interim numeric effluent limits must be included that are set equal to the most stringent level that the discharger can meet (Comment letter 7.13).

Response I.7:

Please see Comments I.5 and I.6, above, and staff's responses to those comments. Please also see the response to Comment I.9, below. The Policy states that interim requirements may be imposed by the Regional Water Boards in addition to interim numeric limitations. Staff agrees that the permittee should be held to the highest discharge quality that can be reasonable achieved during the interim period until final compliance is attained. This is the reason that this information is requested in the Policy's application requirements. Staff has furthermore revised the Policy to make it clear that Water Boards are free to impose stepped-down interim numeric limitations, consistent with the expected performance of phased upgrades, where appropriate.

Comment I.8:
Interim numeric limitations for a pollutant should only be applied to non-storm water discharges. Specifically, we recommend that *Resolve 6.b.* be revised to indicate that the Water Board would establish interim numeric limitations only on waste discharges and shall not apply interim numeric limitations to storm water discharges resulting from industrial, construction, or municipal sources. (Comment letter 13.02).

Response I.8:
Numeric effluent limitations are not usually included in NPDES permits for storm water permittees, and the Policy does not apply to municipal sources. However, if for some reason, numeric effluent limitations ***are*** included in a NPDES permit for a storm water permittee, it may be reasonable to also include interim numeric limitations. Staff therefore does not propose to change the Policy language.

Comment I.9:
It is unclear how backsliding concerns would be triggered in *Section 6.b* of the proposed Policy. The Policy or the supporting documentation should explain the differences, in terms of enforceability and backsliding implications, between interim and final limits. Please clarify if the change in status from "final limit" to "interim limit" triggers a backsliding analysis. (Comment letter 1.06).

Response I.9:
Both interim and final limits are enforceable. Interim limits are enforceable upon the effective date of the permit; final limits are enforceable upon their effective date. When a permit contains final enforceable limits and the permit is revised or reissued to include a compliance schedule with new final limits, the permitting authority must address the antibacksliding proscription in section 402(o) of the CWA. Section 402(o) contains a number of exceptions from the proscription for water quality-based effluent limitations.

Comment I.10:
The final statement of Resolve 6.b. requires that permits that are prepared for Regional Water Board consideration are postponed until the enforcement actions have culminated. This will create more backlogged expired permits. Our recommendation is that the noncompliance under the existing permit should be addressed through appropriate enforcement action as soon as possible. (Comment letter 3.12b).

Response I.10:
Comment Noted. Enforcement action is required only if the prior permit limit cannot be relaxed due to the CWA's antibacksliding proscription.

Comment I.11:

As part of compliance schedules, Regional Water Boards typically set so-called "interim performance-based limits," which ironically have often lasted the entire life of the permit, that are calculated to allow pollutant discharges as high as the polluter has ever discharged, plus an added margin of safety for the discharger, to ensure that the polluter has no risk of violating its permit. Such compliance schedules have repeatedly allowed dischargers to legally spew high concentrations of toxic pollutants such as dioxins, mercury, copper, lead, nickel, selenium, PCBs, and pesticides into waters officially listed as having impaired water quality for those very same pollutants. Such an approach undermines environmental protection, the mission of the Water Boards, and the public's confidence. Our database indicates that the Regional Water Boards are making very widespread use of compliance schedules, and that *the majority* of the dischargers with compliance schedules discharge to CWA section 303(d) listed waters. Thus, many compliance schedules are legalizing discharges which are adding to the pollution woes of waters that the State officially recognizes to be impaired (more than 2000 instances). This is a recipe for adding more impaired waters and thus the need to develop TMDLs. Accordingly, the State Water Board should be very hesitant to continue an approach likely to add to the number of impaired waters in California. (Comment letter 7.05).

Response I.11:
Please see response to Comment A.17, above.

J. Environmental Considerations

Comment J.1:
Because the proposed Policy limits the issuance of compliance schedules to situations when the discharger must “design and construct facilities or implement new or significantly expanded programs” to comply with new, more stringent permit limitations, the State Water Board is creating a policy preference for construction-based compliance solutions, to the exclusion of the alternative compliance strategies. The *Draft Staff Report* is required under CEQA to analyze various environmental impacts associated with the proposed Policy, but fails to consider any potential air quality, energy or greenhouse gas emissions impacts, and simply concludes that there would be no adverse environmental impacts resulting from the actions proposed in the policy. This analysis is woefully inadequate under CEQA and court decisions interpreting the agency's obligations. We believe that the State Water Board should produce evidence and analysis regarding the types of actions that might be required on a statewide scale to comply with all of the differing statewide and/or regional Basin Plan provisions (narrative and numeric) to demonstrate whether all of these actions are feasible to complete within five years. Such an analysis will also assist the State Water Board in a more complete analysis of potential CEQA impacts that will occur as a result of the proposed Policy.
(Comment letters 4.06, 6.07, 12.04, 16.04, and 18.08).

Response J.1:
Staff does not agree that the State Water Board is creating a policy preference for construction-based compliance solutions, to the exclusion of the alternative compliance strategies. The proposed Policy authorizes compliance schedules to provide time for the discharger to implement actions to comply, and the discharger is free to select any appropriate action that will result in compliance. These actions can, but are not required to, be design and construction, source control, operational measures, or any other appropriate actions selected by the discharger.

Further, nothing in the proposed Policy precludes a discharger from pursuing alternative compliance strategies, such as conducting special studies to change the applicable WQS. The only effect of the proposed Policy is to clarify that compliance schedules ***in a permit*** are not appropriate to allow a discharger time to pursue changing the standard. Rather, the CWA and USEPA guidance indicate that compliance schedules in permits are permissible only to provide the discharger time to implement actions that will achieve compliance with the standard. In particular, USEPA has advised the state that compliance schedules are not appropriate solely to provide time to develop TMDLs, UAAs, or SSOs. The discharger can still conduct these studies; however, the discharger will not qualify for a compliance schedule in the permit. Rather, the Water Board can issue an enforcement order, if appropriate, to provide the discharger the needed time to complete the alternate strategy.

In addition, staff does not believe that adoption of the proposed Policy will have any significant adverse effects on the environment. Any potential air quality, energy or greenhouse gas emissions impacts, etc. stemming from any compliance actions undertaken by a discharger are due to the adoption, revision, or new interpretation of the objective or criterion in the WQS, rather than from the proposed compliance schedule policy. The adoption, revision, or new interpretation of a water quality objective or criterion and its subsequent implementation in a permit gives rise to the need for a discharger to comply. The only effect of a compliance schedule is to provide the discharger some protection from citizen's suits and MMPs while the discharger is implementing measures to comply, for the term of the compliance schedule. If a separate enforcement order is issued, in lieu of a compliance schedule in the permit, the discharger may be exposed to penalties. This may result in economic impacts, but these impacts do not rise to the level of environmental impacts.

It should also be noted that the proposed Policy will have no impact on existing compliance schedules due to the grandfather clause. The proposed Policy will authorize compliance schedules in permits for four regions that currently do not have authorization. In those regions, dischargers will now be able to obtain compliance schedules in permits, whereas previously schedules were permissible only in separate enforcement orders. For the remaining regions that currently authorize compliance schedules, the proposed Policy is in some respects more restrictive with respect to the conditions under which schedules are authorized. These differences do not result in potential significant adverse environmental consequences for the reasons explained above. The proposed Policy addresses only the circumstances under which a compliance schedule may be included in a permit. The discharger's need to comply with a new, revised, or newly interpreted water quality objective or criteria is not driven by the compliance schedule policy, but rather by the adoption, revision or new interpretation of the underlying standard.

Commenters contend that it is reasonably foreseeable that POTWs will construct new treatment works or larger facilities if the proposed Policy is adopted. Staff disagrees. These contentions are hypothetical and speculative. It is not reasonably foreseeable that a POTW will select the most capital- and construction-intensive compliance alternative when other less expensive alternatives are available. Again, a POTW or other discharger that needs time to comply with a more stringent permit limitation is free to select whatever compliance alternative is most appropriate. The proposed Policy addresses only whether the POTW will be given time in the permit or in a separate enforcement order.

K. Economic Considerations

Comment K.1:
Because the proposed Policy limits the issuance of compliance schedules to situations when the discharger must "design and construct facilities or implement new or significantly expanded programs" to comply with new, more stringent permit limitations, the State Water Board is creating a policy preference for construction-based compliance solutions, to the exclusion of the alternative compliance strategies. The *Draft Staff Report* fails to present any information on the costs associated with the construction-based compliance solution. A well planned, logical compliance strategy for a new permit limit will consist of consideration of source control, optimization of current treatment plant performance, adjustments to water quality objectives, and/or refinement of analytical techniques prior to expenditure of significant public funds for planning, design, financing, and construction of capital improvements. Without such logical evaluations of new permit limits, not only may public funds be expended unnecessarily, but unnecessary treatment processes may be built. (Comment letters 4.06, 6.07, 12.04, 16.04, and 18.08).

Response K.1:
Staff does not agree that the State Water Board is creating a policy preference for construction-based compliance solutions, to the exclusion of the alternative compliance strategies (see response to Comment J.1, above). Actions that a discharger need to take to comply with a compliance schedule issued in a NPDES permit will be the same actions taken to comply with a time schedule in an enforcement order.

L. Minor Changes and Typographical Errors

Comment L.1:
A typographical error on Page 2 of the Fact Sheet should be corrected to reference section "301" of the CWA, rather than the nonexistent section "1301." (Comment letter 3.02).

Response L.1:
Staff agrees. Staff will correct this typographical error.

Comment L.2:
Finding 7 of the proposed Policy should be revised as follows to be consistent with page 2 of the Staff Report: "The State Water Board has adopted compliance schedule provisions for California Toxics Rule (CTR) criteria **in the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP);** and six **of the nine** Regional Water Quality Control Boards..." (Comment letter 3.06).

Response L.2:
Staff agrees that this proposed change would make the Policy more consistent with the *Draft Staff Report.* The Policy has been changed accordingly.

Comment L.3:
We request clarification on Resolve 2.b and 2.c, with respect to the "revised as of July 1, 2005" date, as the significance of the date eludes us. We suggest that the date be replaced by the dates in which the NTR and CTR were promulgated. (Comment letter 3.09).

Response L.3:
July 1, 2005, is the date when the CTR was last revised (i.e., the latest edition). This date is more appropriate to include in the proposed Policy than the date the CTR was promulgated (May 18, 2000).

Comment L.4:
There is an error on page 45, under "Recommended Alternative: *Alternative 1.d*" of the *Draft Staff Report.* (Comment letter 15.03).

Response L.4:
Staff was unable to identify the error**.**

Comment L.5:
The third paragraph on page 10 of the *Draft Staff Report* discusses portions of the SIP that USEPA disapproved in 2006. We recommend that this paragraph state more clearly that, as a result of USEPA's disapproval this provision is not in effect. We recommend that in the first line, the word "specifies" be changed to "specified." Similarly, please clarify in Table 1 that this disapproved SIP provision does not apply anywhere. We also recommend clarifying on page 13 of the *Draft Staff Report* that the North Coast provision regarding new permittees was disapproved by USEPA and does not apply. (Comment letter 17.07).

Response L.5:
Staff will make these clarifying changes to the *Staff Report*.

Comment L.6:
Page 59 of the *Draft Staff Report* states that "Compliance schedules would not be authorized for permit limitations implementing NTR or CTR criteria (SIP provisions would apply)." This language could be interpreted to suggest that the SIP provisions authorize compliance schedules for NTR criteria. Please clarify that SIP compliance schedule provision explicitly excludes NTR criteria. (Comment letter 17.09).

Response L.6:
Staff agrees that the SIP does not authorize compliance schedules for NTR criteria, and will revise the *Draft Staff Report* to make this point absolutely clear.

Comment L.7:
The Draft Staff Report cites Section 303(d) of the CWA indicating that states must develop TMDLs, and states: "A numeric target for the problem pollutant must be specified for the impaired water body, which when met should ensure attainment of WQSs." We assume that the term "numeric target" in that sentence and elsewhere in the paragraph refers to the TMDL specifically (the total allowable load). Use of the term "numeric target" is ambiguous here because in practice, calculation of different numeric targets may be performed as a part of the TMDL development process. In some cases, a TMDL has several numeric targets, and the target may not be the same as the eventual total maximum daily load (allowable load). Therefore, we recommend that the staff report replace "numeric target" with "total allowable load", which is the term used elsewhere in this paragraph. (Comment letter 17.06).

Response L.7:
Staff will make these clarifying changes to the *Staff Report*.

Comment L.8:
The discussion under Issue 5 (Discharger Eligibility) of the *Draft Staff Report* needs further clarification regarding USEPA's "cut-off date modified to reflect the CTR". (Comment letter 15.08).

Response L.8:
Staff will discuss USEPA's "cut-off date modified to reflect the CTR" further in the *Draft Staff Report*.

Comment L.9:
I do not agree with the CEQA checklist's conclusion that there would be no adverse environmental impacts. The checklist contained no boxes for "no impact", "potentially significant impact", "less than significant impact", or "less than significant impact with mitigation incorporated". (Comment letter 15.02).

Response L.9:
The CEQA checklist inadvertently left off the headings above the check boxes which explain what the level of impact is. However, it is clear from the discussion what these boxes represent. Staff will correct this typographical error.